

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1558 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge?No

MULJIBHAI MANGALBHAI PATEL

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR

Appearance:

Shri P.M.Bhatt, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/03/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned

Assistant Government Pleader Shri T.H.Sompura for the respondents. By consent of the learned Lawyers appearing for the parties, this petition is taken up for its hearing and disposal today itself.

2. The petitioners appear to have filed the declaration in the prescribed form under section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to their holding within the urban agglomeration of Baroda. By the order passed by the Competent Authority at Baroda (respondent No.1 herein) on 26th July 1988, their holding was found to be within the ceiling limit for the purposes of the Act and the proceedings were therefore dropped. It appears that the aforesaid order of respondent No.1 came to the notice of the concerned officer (respondent No.2 herein) of the State Government (respondent No.3 herein). He appears not to have found it according to law. Its suo motu revision was therefore contemplated under section 34 of the Act. Thereupon a show cause notice came to be issued on 24th October 1991 calling upon the petitioners to show cause why the aforesaid order passed by respondent No.1 on 26th July 1988 should not be revised. After hearing the petitioners, by the order passed by respondent No.2 on behalf of respondent No.3 on 18th July 1992, the combined holding of the petitioners was declared to be surplus by 268 square metres. Its copy is at Annexure-A to this petition. It may be mentioned that the petitioners were granted three units in all to the tune of 4500 square metres. The excess land in their holding was found to be to the tune of 268 square metres. Since that was within 10% margin, the petitioners applied on 19th November 1992 for grant of exemption qua the excess land to the tune of 268 square metres in view of the Government Resolution of 29th June 1977 (a copy of which is at Annexure-D to this petition). By the order passed by the Deputy Secretary, Revenue Department of the State Government (respondent No.4 herein) on 5th April 1993, it came to be rejected. Its copy is at Annexure-B to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-B to this petition.

3. It may be mentioned that, under the order at Annexure-B to this petition, a strange reasoning is given for not accepting the application by observing that the partition was notional. If it was so, no separate units for two sons (petitioners Nos.2 and 3 herein) of petitioner No.1 should have been granted. The fact that

their share in the holding of their father (petitioner No.1 herein) has been recognised and separate units are given to them would go to show that they were entitled to separate units. Each one would therefore be entitled to the benefit flowing from the Government Resolution at Annexure-D to this petition. As aforesaid, the excess land is found to be 268 square metres only. In each case, the excess land would therefore come to the tune of only about 89 square metres. That would be very much within the ceiling limit of 1500 square metres prescribed for the urban agglomeration of Baroda under the Act.

4. In the unreported ruling of this court in Special Civil Application No.357 of 1993 decided on 7th April 1994, this court has given effect to the aforesaid Government Resolution at Annexure-D to this petition by observing: "The effect of this Circular has not to be confused while taking the combined holding of the landholders". It would mean that, if the excess land declared in the combined holding of the petitioners is within 10% margin of their combined retainable holding, the benefit of the Government Resolution at Annexure-D to this petition should be given. A copy of the aforesaid unreported ruling of this court is at Annexure-F to this petition.

5. The ruling of this court at Annexure-F to this petition is on all fours applicable in the present case. The combined retainable holding of the petitioners is to the tune of 4500 square metres and the excess land in their combined holding is found to be 268 square metres. That is very much within 10% margin of their combined retainable holding. Examining the case from another angle, the same result would ensue. Each petitioner would be entitled to the ceiling limit of 1500 square metres. Their combined excess land to the tune of 268 square metres will have to be divided among three landholders. In that case, the surplus land in each one's holding would be around 89 square metres. That is certainly within 10% margin of the ceiling limit. In either view of the matter, the petitioners are entitled to claim benefit of the Government Resolution at Annexure-D to this petition.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-B to this petition cannot be sustained in law.

7. In the result, this petition is accepted. The order passed by respondent No.4 on behalf of respondent No.3 on 5th April 1993 at Annexure-B to this petition is

quashed and set aside. It is hereby declared that the excess land held by the petitioners to the tune of 268 square metres cannot be declared surplus in view of the Government Resolution at Annexure-D to this petition. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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